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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Implementation of the ) CC Docket No. 96-150  
Telecommunications Act of 1996: )  
 )  
Accounting Safeguards Under the )  
Telecommunications Act of 1996 )

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**COMMENTS OF THE  
ALARM INDUSTRY COMMUNICATIONS COMMITTEE**

The Alarm Industry Communications Committee ("AICC"), by its attorneys, respectfully submits the following comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned docket.<sup>1</sup> For the reasons explained below, AICC recommends that the Commission adopt its proposed accounting safeguards for alarm monitoring services, and apply those rules to both the interstate and intrastate components of alarm monitoring. In addition, the Commission should clarify that the rules will apply to all activities identified as within the definition of "alarm monitoring" under Section 275 of the Telecommunications Act of 1996 ("1996 Act").<sup>2</sup>

**I. STATEMENT OF INTEREST**

AICC is a trade group devoted to the telecommunications issues affecting providers of alarm monitoring services. The AICC a subcommittee of the Central Station

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<sup>1</sup> FCC 96-309 (rel. July 18, 1996) ("*NPRM*").

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

Alarm Association. Its members consist of ADT Security Systems, Inc.; Holmes Protection Group; Honeywell Protection Services; the National Burglar and Fire Alarm Association; Rollins, Inc.; Wells Fargo Alarm Services; the Security Industry Association and Security Network of America. The membership represented by the AICC constitutes the overwhelming majority of the alarm security services in the United States. AICC members are highly dependent on the Bell Operating Companies ("BOCs") and other local exchange carriers ("LECs") for essential services and interconnection to local exchange facilities in order to provide alarm monitoring services. AICC has participated extensively over the years in the *Computer III* proceeding and in other Commission proceedings affecting the provision of alarm monitoring services.

## II. ARGUMENT

AICC submits these comments to underscore the importance of effective cost accounting safeguards for the provision of alarm monitoring services. In the legislative process leading up to passage of the 1996 Act, Congress examined evidence of past practices by the BOCs in the provision of alarm monitoring services and concluded that the potential for LECs to act anticompetitively is, in this context, "real . . . not theoretical."<sup>3</sup> Accordingly, the Act established a special provision for the conduct of alarm monitoring services, apart from the provisions applicable to other information services. Section 275 of the Act prohibits the BOCs from engaging in the provision of alarm monitoring services for

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<sup>3</sup> H.R. Rep. No. 104-204, 104th Congr., 1st Sess. 87 (1995).

five years, with only a narrow exception for the preexisting activities of one BOC.<sup>4</sup> Non-BOC LECs are permitted to provide alarm monitoring services immediately, however.

The 1996 Act did not mandate that LECs (or, ultimately, the BOCs) provide alarm monitoring through a separate affiliate. Instead, the Act prohibits a LEC from subsidizing its alarm monitoring services in any way, directly or indirectly, from its telephone exchange service revenues.<sup>5</sup> Thus, it is critical that the Commission adopt accounting safeguards that are sufficient to ensure the LEC does not subsidize its alarm monitoring services with exchange revenues.

The *NPRM* notes that under existing rules, alarm monitoring services are treated as nonregulated activities for cost accounting purposes.<sup>6</sup> As a result, the costs of providing alarm monitoring services are to be separated from local exchange services, and, where joint costs are involved, they generally must be allocated to the alarm monitoring service. AICC supports the continuation of these rules for LEC-provided alarm monitoring services. However, the Commission should make clear that these accounting safeguards will apply *in addition to* the other non-accounting safeguards adopted by the Commission in the *Computer III* proceeding, including the non-discrimination, reporting, and CEI requirements adopted in that proceeding.<sup>7</sup> Nothing in the Act supports the interpretation that Congress

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<sup>4</sup> 47 U.S.C. § 275(a). The Act allows a BOC engaged in alarm monitoring services as of November 30, 1995 to continue such activities, subject to certain limitation. *Id.* § 275(a)(2). It is commonly believed that this provision applies only to Ameritech.

<sup>5</sup> 47 U.S.C. § 276(b)(2).

<sup>6</sup> *NPRM* at ¶ 53.

<sup>7</sup> Further, if a LEC decides to offer alarm monitoring services through a separate affiliate, the Commission's affiliate transaction rules, as the Commission proposes to modify them in the *NPRM*, should apply to that affiliate.

intended to replace these restrictions when it prohibited cross-subsidization of local exchange and alarm monitoring services.

Indeed, it appears at this point that the most important cost accounting issue the Commission must address is the scope of activities considered to constitute the "provision" of alarm monitoring services. Thus far, three of the BOCs have advanced three separate interpretations of the scope of Section 275(a) in an attempt to avoid Congress' five-year prohibition. The questions raised by these BOCs' attempts to circumvent Section 275 are under consideration in a separate proceeding,<sup>8</sup> and need not be repeated here. However, it is important that the Commission make clear in this proceeding that *whatever* activities are deemed to constitute the provision of alarm monitoring services in Docket 96-152 will also determine the scope of the application of the Commission's cost accounting rules here. However the Commission defines alarm monitoring services, it should be consistently applied both in determining what activities the BOCs are precluded from offering and in determining how other LECs must account for their alarm monitoring costs.

Finally, AICC believes that Section 275 preempts state cost accounting rules for intrastate alarm monitoring services. Section 275(e) defines "alarm monitoring service" in a way that is not limited to services involving the interstate transmission of signals between the customer premise and the monitoring center.<sup>9</sup> Moreover, the relationship between Section 275 and Section 272's structural separation requirement also suggests that

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<sup>8</sup> *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, Notice of Proposed Rulemaking, CC Docket 96-152, FCC 96-310 (rel. July 18, 1996).

<sup>9</sup> 47 U.S.C. § 275(e).

Congress intended to give the FCC jurisdiction regardless of the traditional classification of calls as interstate or intrastate. In a companion proceeding to this one, the Commission has already tentatively concluded that Section 272 applies to both interstate and intrastate services.<sup>10</sup> In this case, Section 275 stands alone as a substitute for Section 272, which establishes a sunset provision that expires before the five-year prohibition of Section 275 expires. It is logical to assume from this structure that Sections 272 and 275 apply to the same scope of services.

Even if the Commission concludes that Section 275 does not, by its terms, preempt state regulation, it is clear that the agency has additional power to preempt state regulation if application of the state policy will impede valid federal policies.<sup>11</sup> If a state's regulation is less protective, for example, a BOC or LEC could structure its operations so that its monitoring center is located within the same state as the customer, thereby avoiding federal regulation altogether. Such a response will endanger the FCC's ability to ensure that alarm monitoring services are not subsidized by local exchange ratepayers.

For the foregoing reasons, AICC urges the Commission to apply its existing cost accounting rules to LEC alarm monitoring services, subject to the modifications proposed in the *NPRM*. AICC also urges the Commission to clarify that its rules will apply

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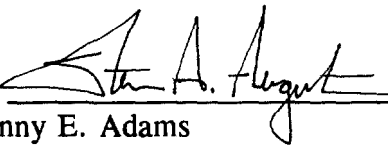
<sup>10</sup> *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Notice of Proposed Rulemaking. CC Docket No. 96-149, FCC 96-308 (rel. July 18, 1996).

<sup>11</sup> *See California v. FCC*, 39 F.3d 919 (9th Cir. 1995).

to all activities deemed to constitute alarm monitoring services in the separate docket addressing this issue.

Respectfully submitted,

**ALARM INDUSTRY COMMUNICATIONS  
COMMITTEE**

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